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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)
	)
Petition for Rulemaking Regarding	)
Presubscribed Interexchange Carrier Charges	)
	)

PETITION FOR RULEMAKING

The Competitive Telecommunications Association ("CompTel"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules, hereby petitions the Commission to initiate a rulemaking proceeding to revise its policies governing the federally-tariffed charges of incumbent local exchange carriers ("ILECs") for changing the presubscribed interexchange carrier ("PIC") for end-user subscribers. CompTel requests, in particular, that the Commission eliminate the existing $5.00 "safe harbor" and require instead that ILEC PIC change charges be set at cost.

The Commission should conduct this rulemaking expeditiously because it will save consumers hundreds of millions of dollars annually. That is the amount which CompTel estimates the ILECs receive each year in excessive PIC-change charges based on the $5.00 safe harbor. With only a few exceptions, the ILECs continue to assess the same $5.00 PIC change charge that they introduced in their initial post-divestiture access tariffs in the mid-1980s, even though the cost of processing PIC change charges has declined precipitously over the past fifteen years. The ILECs' above-cost PIC change charges result in higher long

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distance prices, to the detriment of consumers, and permit the ILECs and their long distance affiliates to engage in an anticompetitive price squeeze.

CompTel is the premier industry association representing competitive telecommunications providers and their suppliers in the United States. CompTel has a direct interest in revising the ILECs' PIC change charges because many of its more than 300 members provide interstate long distance services, and a PIC change charge must be paid, either by the subscriber or the carrier itself, each time a subscriber changes its presubscribed long distance carrier.

I. Background

In 1997, MCI Telecommunications Corporation ("MCI") filed complaints against certain price cap ILECs on the ground that their PIC change charges were unjust and unreasonable in violation of Section 201(b) of the Communications Act. MCI showed that these ILECs had maintained the same $5.00 (or higher) PIC change charge for almost fifteen years, even though the costs that these ILECs incurred to change a customer's presubscribed long distance carrier had fallen significantly during that period.

In the MCI Order, released on May 18, 2000, the Commission agreed with MCI that the ILECs had, in fact, realized "substantial cost savings" from the automation of their PIC-change processes over the past fifteen years.[1] The Commission cited, among other things,

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[1] MCI Telecommunications Corporation v. U S West Communications, Inc. et al., 15 FCC Rcd 9328, Memorandum Opinion and Order, released May 18, 2000, at ¶ 9 (MCI Order).

the fact that the ILECs now employ systems that permit them to process PIC changes virtually instantaneously, with little or no manual intervention.[2]

The Commission determined, however, that it could not find the ILECs' continued assessment of a $5.00 PIC change charge to be unlawful.[3] The Commission concluded that policies adopted in the 1984 Access Charge Order and the 1987 Access Tariff Order did not require that PIC change charges be cost-based; instead, the Commission suggested, these orders effectively created a $5.00 ceiling under which PIC change charges were deemed reasonable. The Commission suggested that it had adopted this policy because (1) developing a cost-based charge had "present[ed] a difficult challenge for the carriers" in 1984 and 1985; and (2) a non-cost based charge could "discourage excessive amounts of shifting back and forth between or among carriers."[4]

Even though the Commission denied MCI's complaints, it recognized that "[i]t may well be that the polices reflected in the 1984 Access Charge Order and the 1987 Access Tariff Order are no longer appropriate in light of changes in the industry since that time."[5] The Commission also noted that an above-cost PIC change charge could give the Bell Companies an unfair competitive advantage over competing long distance carriers in states where the Bell Companies receive Section 271 approval to provide in-region interLATA

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2 Id. at ¶ 8.

3 Id. at ¶ 9.

4 Id.

5 Id. at ¶ 14.

services.[6] The Commission invited parties to petition the Commission to reexamine these policies, stating that "nothing in this order should be construed as discouraging any party from initiating or participating in rulemaking proceedings to reevaluate the Commission's policy regarding PIC-change charges in light of the marked changes in long distance competition and local phone service over the past fifteen years."[7] CompTel is taking up the Commission's invitation, and hereby submits this petition to eliminate the $5.00 safe harbor and to ensure that ILECs tariff PIC change charges that more closely reflect their underlying costs.

II. The Commission Should Revise its PIC-Change Charge Policies

The Commission should initiate a rulemaking proceeding to revise its PIC change charge policies as they apply to large and mid-sized price cap ILECs.[8] Specifically, CompTel requests that the Commission initiate a proceeding to (1) eliminate the $5.00 "safe harbor" under which these ILECs' PIC change charges are deemed reasonable; and (2) revise its policies to require that these ILECs' PIC change charges be set at cost.

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6 Id. at ¶ 14 n.30.

7 Id. at ¶ 2.

8 For the purposes of this petition, CompTel uses the terms "large" and "mid-sized" price cap carriers to refer to those price cap carriers that are subject to the "target rates" specified in Section 61.3(qq)(1) and (3) of the Commission's rules. Because only limited data concerning the PIC-change costs of rate of return carriers and small price cap carriers (those subject to Section 61.3(qq)(2) of the Commission's rules) are available at this time, the Commission should defer a revision of its PIC change charge policy for these carriers to a further proceeding.

The Commission's existing PIC change policy, which permits ILECs to assess PIC change charges that are well in excess of cost, is not in the public interest. First, the above-cost PIC change charges translate directly into higher long distance rates. While the ILECs' tariffs provide that the PIC change charge is assessed on end users, it is standard long distance industry practice to reimburse new customers for the full amount of this charge. Because the PIC change cost must then be recovered through long distance carriers' per-minute rates, the above-cost PIC change charge results in higher long distance rates, thereby suppressing demand for long distance service and reducing consumer welfare. Of course, when subscribers pay the PIC change charge themselves, the harm is even more direct and immediate.

Second, above-cost PIC change charges will have an even more damaging effect on long distance competition when the beneficiaries of these above-cost charges – the Bell Companies and other ILECs – begin to enter the interLATA long distance market on a broad scale. As long as ILECs are permitted to assess above-cost PIC change charges on unaffiliated IXCs, the ILECs will be able to implement a price squeeze that will provide an unfair competitive advantage to the ILECs' long distance affiliates. While the unaffiliated IXC will be forced to pay an above-cost PIC change charge, the ILEC long distance affiliate will face only the (much lower) economic cost of changing the PIC. The Commission has long recognized the risk that the ILECs will engage in such anticompetitive practices; in the expanded interconnection proceeding, for example, the Commission observed that "[a] monopoly provider of an essential service to a rival can subject its rival to a 'price squeeze" by inflating the cost of these essential services.[9] Further, the Commission recognized this risk in the context of excessive PIC change charges when it dismissed MCI's complaints, as noted above.[10]

The Commission's original justifications for a non-cost based PIC change charge in its 1980s access charge decisions are no longer valid. First, it is no longer the case that the ILECs face a "difficult challenge" in developing cost support data for their PIC-change charge. While this may have been true in 1984 and 1985, when the ILECs had only limited experience processing PIC change charges, the ILECs now have fifteen years of experience that they can draw on when developing cost-support data. That the development of cost-support data is no longer a challenge for the ILECs is demonstrated by the fact that at least two ILECs – BellSouth and SNET – have filed PIC change tariffs that were accompanied by the kind of detailed cost support that was not available to the Commission in 1984-85.[11] Given that ILECs and the Commission now have the ability to accurately determine ILEC PIC change costs, there is no longer any justification for retaining a PIC change policy that was intended, at least in part, to accommodate LEC difficulties in developing cost support data.

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9 In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Report and Order, 10 FCC Rcd 6375, 6403 (1995).

10 MCI Order, ¶ 14 n.30.

11 See BellSouth Tariff FCC No. 4, Transmittal No. 303, April 2, 1990; SNET Transmittal No. 39, Transmittal No. 662, December 18, 1995.

Second, it is clearly no longer appropriate for the Commission to sanction above-cost PIC change charges on the grounds that they "discourage excessive levels of switching back and forth." After all, a policy whose purpose is to discourage a customer from "switching back and forth" between long distance carriers is, in essence, a policy whose purpose is to dampen competition and consumer choice in the long distance market. Such an anti-consumer policy is an anachronism, entirely inconsistent with the "pro-competitive" national policy framework of the Telecommunications Act of 1996 and with the Commission's long record, over the fifteen years since it last addressed PIC change charge levels, of promoting competition in the telecommunications industry. It is unimaginable that the Commission would today suggest that a particular level of competitive rivalry is "excessive," much less adopt a policy that was intended to discourage consumers from selecting the carrier of their choice.

Indeed, in the years since the Commission last examined its PIC change charge policy, the Commission has developed a consistent policy of promoting competition by prohibiting non-cost based nonrecurring charges. For example, the Commission's Nonrecurring Charge Order specified that nonrecurring charges should reflect only the "one-time expenses incurred . . . in installing, moving, rearranging, or terminating an access service from the initial receipt of a service order to the point at which service is provided."[12] Therefore, the Commission should expeditiously revise its PIC change charge policy to be consistent with its general policy of requiring nonrecurring charges to be set at cost.

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[12] Investigation of Interstate Access Tariff Non-Recurring Charges, Memorandum Opinion and Order, 2 FCC Rcd 3498, 3501 (1987) (Nonrecurring Charge Order).

III. The Commission Should Require the LECs to File Revised PIC-Change Tariffs

In addition to revising its PIC change charge policy to require that ILEC PIC-change charges be set at cost, the Commission should order large and mid-sized price cap ILECs to file revised PIC change charge tariffs that are consistent with the new policy. The Commission should require that the ILECs file these revised tariffs to be effective on January 1, 2002.

The record developed in the MCI Order proceeding and other regulatory proceedings shows that, to be consistent with a policy requiring that PIC change charges be set at cost, the ILECs' PIC change charges would be far below the $5.00 charge that is assessed by most large and mid-sized price cap ILECs today. Whereas the ILECs' initial PIC change tariffs assumed that PIC change requests would generally be received from end users and handled using a manual process, today the vast majority of PIC change requests are submitted directly by IXCs and are handled using a fully automated process. In the automated process, IXCs submit PIC change requests to the ILEC in the industry-standard Customer Account Record Exchange (CARE) format; the ILEC's CARE system validates the PIC change requests and then forwards these requests to an ILEC operations support system (MARCH) that updates the switch. Other than some computer time, the ILEC incurs no direct costs to process these automated PIC changes. And only a minority of PIC changes -- typically, those initiated directly by end users -- incur any manual processing costs.

In order to streamline the tariff review process, the Commission should adopt a policy under which tariff filings proposing revised PIC-change charges will be presumed lawful and need not be accompanied by cost support if they are below a specified threshold. Petitioners seeking suspension of proposed PIC-change rates that are at or below this threshold could be required, for example, to meet the substantial showing set forth in Section 1.773(a)(1)(iv) of the Commission's rules.

Specifically, the Commission should establish that ILEC tariff filings proposing revised PIC change charges will be presumed lawful and need not be accompanied by cost support if the proposed rate is at or below the $1.49 rate that BellSouth has charged since July 1, 1990. Setting the threshold at the level of BellSouth's rate would be consistent with prior Commission decisions in which the Commission has evaluated proposed rates by comparing them to the rates charged by similarly situated ILECs.[13] In this case, comparing the ILECs' proposed PIC change charges to BellSouth's rate is appropriate because the record shows that the other price cap LECs use PIC change charge systems and procedures that are, in all key respects, substantially similar to those used by BellSouth. The Commission specifically determined in the MCI Order that the defendants had failed to identify any specific disparities between their PIC change systems and those of BellSouth.[14]

Conversely, the Commission should provide that any tariff filing proposing a PIC change charge in excess of $1.49 will not be presumed lawful and must be accompanied by detailed cost support. The Commission should make clear that these cost studies may include only those additional costs that are directly attributable to the process of changing a customer's PIC, i.e., those costs that the ILEC incurs to receive and validate a PIC change

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13 See MCI Order at ¶ 9 n.16.

14 MCI Order at ¶ 9.

request in the CARE system and then forward that request to the switch. The ILECs should not be permitted to include the costs of unrelated functions that may be carried out by their subscription groups, such as any costs the ILECs may incur to respond to inquiries concerning alleged unauthorized PIC changes or any costs that ILECs incur to implement "PIC freezes." Because these customer-service expenses do not represent "one-time expenses incurred . . . in installing, moving, rearranging, or terminating an access service from the initial receipt of a service order to the point at which service is provided,"[15] the Commission's general policy governing nonrecurring charges prohibits their inclusion in the ILECs' PIC change charges.

To the extent that a computer system used for PIC changes performs other functions as well, the cost study should include only those costs specifically incurred to process PIC changes. Similarly, if manual order entry costs are included in the cost study, they should reflect only the time required for ILEC customer service personnel to enter a PIC change request -- and should not reflect time associated with other customer-service functions that may be carried out during the same call, including any time that customer-service representatives may use to propose "PIC freezes" to the end user. The ILEC should be required to explain how it determined the time required for a customer-service representative to enter a manual PIC change request, and how it determined the percentage of PIC changes that require manual order entry.

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[15] See Nonrecurring Charge Order, 2 FCC Rcd at 3501.

IV. Conclusion

For the reasons stated herein, the Commission should initiate a rulemaking proceeding to revise its PIC change charge policies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle L. Arbaugh, hereby certify that on this 16th day of May, 2001, copies of the foregoing were served via hand-delivery on the following:

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